IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1729 OF 2006

Satish K. Deshmukh ... Petitioner

V/s.

The State of Maharahstra & Ors. ... Respondent.

Mr. P.B. Shah, for Petitioner.
Mr. A.S. Shitole, A.P.P. for State.

CORAM : A.S. OKA, J.
DATE : 22ND AUGUST 2006

P.C. :

1. Heard learned Counsel appearing for the Petitioner. The Petitioner was convicted by Judgment and order dated 22nd August 2005 passed by the learned 7th Ad-hoc Assistant Sessions Judge, Nasik for the offences punishable under Section 498A and 306 of the Indian Penal Code. An Appeal preferred by the Petitioner in the Sessions Court for challenging the order of conviction is pending. The Appeal has been admitted and the Petitioner has been enlarged on Bail. The Petitioner is accused No.1. The Accused No.2 applied for discharge. The application for discharge made by the Accused No.2 has been rejected by order dated 3rd June 2004 passed by the learned 4th Ad-hoc Assistant Sessions Judge, Nasik. Being aggrieved by the said order, the accused No.2 has filed Criminal Application No.3224 of 2004 in this Court and by order dated 28th October 2004, this Court has issued rule in the said Criminal Application and has granted stay of further proceedings as against Accused No.2. In view of the said order, the trial Court proceeded with the trial against the Petitioner and order of conviction has been passed as stated above.

2. The Petitioner made an application at Exhibit 18 in the pending Appeal against conviction praying that till the final disposal of the application filed by the accused No.2 in this Court, the hearing of the Appeal may be stayed. The said application has been rejected by order dated 25th July 2006 by the learned Additional Sessions Judge.

3. This Petition is filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973. The substantive prayer in the Petition is for quashing the Criminal Proceeding initiated against the Petitioner. The second prayer is that this Petition should be heard alongwith the application filed by the accused No.2 in this Court. The third prayer is for interim relief of stay of the Criminal Appeal pending before the Sessions Court.

4. Shri Shah appearing for the Petitioner submitted that according to the prosecution case, the accused No.2 is the main accused. He submitted that this Court by an interim order has stayed the case against the Accused No.2. He submitted that as the charge against accused No.2 is not established and as this Court has granted stay of trial against the accused No.2, the proceedings againt the Petitioner be ordered to be quashed. He submitted that,

in any event, this Writ petition deserves to be heard alongwith the application filed by the accused No.2. Lastly, he submitted that the appeal preferred by the Petitioner cannot be heard till the decision of the application filed by the accused No.2. He submitted that if the accused No.2 succeeds in this Court, the Judgment of this Court will be useful to the Petitioner.

5. I have considered the submissions. The Criminal Proceedings initiated against the Petitioner has culminated into conviction of the Petitioner for the offences punishable under Section 498 A and 306 of the Indian Penal Code. The Petitioner has already availed of the efficatious remedy of preferring an appeal against the conviction. The Appeal is pending in the Sessions Court and the Petitioner has been protected by granting appropriate interim relief. The Petitioner has been convicted after a regular trial. Extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India cannot be certainly exercised at this stage for quashing the Criminal proceeding against the Petitioner when there is already an order of conviction. The power under Section 482 of the said Code has to be exercised in exceptional cases. When the Petitioner has been convicted after a full trial, power under Section 482 can not be exercised for quashing the trial.

6. The prayer for stay of proceeding of the Appeal preferred by the Petitioner has been rightly rejected by the Sessions Court. The trial of the Petitioner was separated. Evidence has been led in the trial. Whether the order of the conviction is justified or not has to be decided on the basis of evidence which is led by the prosecution. Merely because the other accused against whom trial has not proceeded has challenged in this Court the order rejecting application for discharge, there is no ground to stay the hearing of the statutory appeal preferred by the Petitioner against the order of conviction. As stated earlier, the Petitioner is enjoying interim relief in the said appeal.

7. Under the circumstances, it is obvious that there is absolutely no merit in the Petition and the same is rejected. All contentions in the pending appeal preferred by the Petitioner are kept open.

JUDGE